

1973

## State of Utah v. Darnell L. Garcia : Brief of Amicus Curiae On Behalf of Respondent

Utah Supreme Court

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**IN THE SUPREME COURT  
OF THE  
STATE OF UTAH**

STATE OF UTAH,

*Plaintiff-Appellant*

VS.

BARNELL L. GARCIA,

*Defendant-Respondent*

APPEAL FROM THE JUDICIAL  
JUDICIAL COURT, IN AND FOR THE  
OF UTAH, THE HONORABLE  
JUDGE

**AMICUS CURIAE**

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

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STATE OF UTAH, :  
Plaintiff and : Case No. 12994  
Appellant, :  
-vs- : BRIEF OF AMICUS CURIAE  
DARNELL L. GARCIA, : ON BEHALF OF RESPONDENT  
Defendant and :  
Respondent. :

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STATEMENT OF THE NATURE OF THE CASE

This is an appeal brought by the State of Utah from an Order made by the Honorable Calvin Gould whereby the Court arrested and vacated a Judgment heard by the Trier of Facts in a criminal prosecution thereby discharging the Defendant-Respondent.

DISPOSITION IN LOWER COURT

The Respondent, Darnell L. Garcia, was tried for burglary in the second degree

on May 18, 1972, wherein the Honorable Calvin Gould sitting as a presiding Judge for the District Court of the Second Judicial District in Weber County, Utah, did arrest and vacate a Judgment as to the guilt of the Defendant-Respondent and discharged the Defendant-Respondent based upon the Court's belief that an imposition of sentence as against the Respondent would be an unjust and unequal dispensing of punishment.

#### RELIEF SOUGHT ON APPEAL

The Respondent seeks an Order dismissing the Appeal of the Plaintiff based upon the authority of the District Court to impose sentence or discharge a Defendant where the Court has been the Trier of Facts.

#### STATEMENT OF FACTS

As Amicus Curiae, the writer will not restate any of the facts inasmuch as two opposite positions have been taken on the facts by the Appellant and by the Respondent,

the Court having the record before it shall make its own determination as to the correctness of the facts and as to the materiality of some of the assertions therein.

## ARGUMENT

### POINT I

#### FACTS CONSIDERED BY COURT IN RENDERING VERDICT NOT REVIEWABLE

The Appellant seeks to review the Judgment of the Lower District Court upon the factual basis, that the Court in dismissing the cause of action as to the Defendant-Respondent made certain statements relating to facts as to the Court's basis for refusing to find the Respondent guilty and thereupon negated the authority of the Court to exonerate the Defendant from sentence in the Lower Court.

This Court had occasion to discuss the relationship of the motivation and expression of a District Court Judge in rendering a

criminal verdict in the case of State vs. Martin, 49 Ut. 346, 164 P. 500, March 23, 1917, wherein the Court before passing sentence reviewed the past record of the Defendant and in doing so referred to matters that were not a part of the record in the case at bar, but which had come out at a former trial of the Defendant and which occurred before the same Judge who tried the case at bar, and wherein the matters related to, or were connected with, the circumstances shown at the trial before the Court. The question before the Court in that case was whether or not the Supreme Court can review a matter which merely reflects the mental attitude of the trial Judge, which is the result of what the trial Judge heard and saw during two trials of the Defendant. This Court stated:



"\*\*The mental attitude of the Judge, whether expressed or not, in passing Judgment, cannot be made a matter for review by this Court."

The Court had the authority as the Trier of Facts to render a verdict of not guilty as to the party involved, or upon finding the Defendant guilty, to render a suspended or probationary penalty as to the Respondent and it is submitted that the final act of the Court in not rendering a Judgment against the Respondent was fully within the statutory authority of the Court as a Trier of Facts which in accordance with State vs. Martin, supra, this Court has stated:

"The sentence therefore strictly conforms to the statute, and, that being the case, we are powerless to declare it illegal, or even erroneous. The question presented by counsel therefore is not one that is reviewable by this Court, but under our Constitution may be presented to the Board of Pardons, \*\*\*"

State vs. Fedder, et al., 262 P.2d

753, Sup.Ct. Utah, Oct. 30, 1953, was a case wherein the Defendant entered a plea of guilty to a charge of receiving stolen goods and the Defendant was placed on probation and subsequent thereto an Order to Show Cause why probation should not be revoked was issued. The Defendant entered a Motion to Quash the Order and the Lower Court Judge entered Judgment denying the Motion to Quash.

This Court held that there is no distinction between the words "Judgment" and "sentence" and as in the instant case here before the Court where the Court declared the legal consequence of its verdict as being that no sentence would be imposed and where there was no other conduct of the Court in imposing probation, then the "sentence" or "Judgment" of the Court must be taken as a final determination of not guilty as to the Respondent herein.

It has been clearly documented by citations and Statutes, that the discretion of the judiciary is restricted only by specific statutory bounds, and the Supreme Court of Arizona in Varela vs. Merrill, 51 Ariz. 64, 74 P.2d 569, 1937, well defined the discretionary authority of the Court when it stated:

"\*\*\*There are no rules prescribed as to when this discretion shall be exercised, or as to what evidence is necessary to satisfy the Trial Judge, that the case is a proper one for its exercise. Indeed, it would be almost impossible to present a case which could justify this Court in finding that the Trial Court had abused its discretion in regards to whether sentence should be suspended or not."

In the instant case before this Honorable Court, the fact that the Court was the Trier of Facts and used its discretion in what it considered the best interest of justice and in exercising the traditional authority of a Court,

and particularly as a Trier of Facts, to determine the proper "sentence" or "Judgment". in a proceedings before the Bench cannot now be said to be an abuse of the discretion of a District Court Judge.

In the matter of Habeas Corpus of James P. Duty, Petitioner, 318 P.2d 900, the Criminal Court of Appeals of Oklahoma, Nov. 27, 1957, the Court held that where the Trial Court has jurisdiction of the person, the subject matter, and authority to pronounce the Judgment and sentence rendered, and nothing occurs to deprive the Trial Court of jurisdiction, no other elements are necessary for a valid Judgment.

In United States vs. Hetherington, 279 F.2d 792, 7th Circuit, cert. denied 364 U.S. 908, 81 Sup.Ct. 271, 1960, the Court held that legal sentences are not subject to review, "except possibly for manifest abuse of discretion."

Livers vs. United States, 185 F.2d

807, 6th Circuit, 1950, the Court held that a sentencing Judge's discretion will not be disturbed on Appeal, "except upon a plain showing of gross abuse."

Tincher vs. United States, 11 F.2d

18, 4th Circuit, cert. denied 271 U.S. 664, 46 Sup.Ct. 475, 1926, the Court held that a sentencing Judge's discretion should not be disturbed, "except in cases of gross or palpable abuse."

## POINT II

### DISCHARGE OF RESPONDENT AFTER HEARING AND JUDGMENT IS FINAL

In the People vs. Superior Court of Marion County, 72 Cal.Rep. 330, 446 P.2d 138, Sup. Ct. of California, Oct. 31, 1968, the Court held that the State's Petition for a Writ of Mandate to compel the Respondent's Superior Court to vacate an Order dismissing

information in the interest of justice did not lie. In this case, the Trial Judge dismissed the information on its own Motion after the jury had returned a verdict finding the Defendant guilty of two counts of robbery in the first degree.

The Court stated that the restriction on the People's right to appeal is not merely a procedural limitation allocating Appellate review between direct appeals in extra ordinary risks, but is a substantive limitation on review of Trial Court's determinations in criminal trials. The Supreme Court held that the Superior Court was the ultimate tribunal as long as it did not exceed its jurisdiction and that error in the exercise of its jurisdiction may not be reviewed by any other tribunal.

The Attorney General in this case further contended that the Court had no

power to dismiss after a jury verdict of guilty and that to do so constituted an abuse of discretion. The Court alleged that the discretion of the Judge is absolute except where the legislature has specifically curtailed such discretion.

In People vs. Sidener, 58 Cal.2d 645, 375 P.2d 641, the Court stated that the Courts were vested with a Common Law power of nolle prosequi and that the Common Law power permitted an entry of nolle prosequi before the jury was empaneled while the case was before the jury, or after verdict.

#### CONCLUSION

It is respectfully submitted to this Court that there is a broad discretionary power vested in the Judges of the District Courts of the State of Utah, and that in a particular action where the Judge is also the Trier of Facts, that the ultimate

"sentence" or "Judgment" rendered by the Court is a final Judgment and should be subject to review only upon a deprivation of constitutional rights of the Defendant or abuse of the statutory authority of the Lower Court, and that the prosecuting Attorney does not have the ultimate and final authority to override the final Judgment of the District Court Judge.

Respectfully submitted,

DAVID B. HAVAS

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